DOCUMENT RESUME

ED 376 537 CS 508 748

AUTHOR Colvert, Audra L.
TITLE Coaching and Counseling: Liability Issues.
PUB DATE Nov 94
NOTE 12p.; Paper presented at the Annual Meeting of the Speech Communication Association (80th, New Orleans, LA, November 19-22, 1994).
PUB TYPE Viewpoints (Opinion/Position Papers, Essays, etc.) (120) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Confidentiality; *Counseling; *Debate; *Helping Relationship; Higher Education; *Teacher Student Relationship; Tutors; Undergraduate Students
IDENTIFIERS *Debate Coaches

ABSTRACT

Since there is virtually no legal ground protecting coaches who give help and advice to students, coaches must be willing to weigh the consequences of their actions. Confidentiality is a sticky issue in the university setting because "privileged communication," a formal legal confidentiality applying to priests, lawyers, and physicians, does not extend to teachers and coaches. So what happens when information revealed to the coach violates a university, local, or state law? Coaches have absolutely no legal grounds for disclosing or not disclosing private information about a student. No matter how close coaches get with their students, those confidential relationships are not protected by law; a coach could be asked to testify in a court of law. While it may seem like a hopeless situation, the advantage to not having to adhere to the privileged communication law is that it allows coaches to report what they see to proper persons when the situation arises--without the worry of breaking laws. How should the coach decide when to disclose information and when not to? The guidelines used by clinical psychologists are useful. Under those guidelines, disclosure may occur when the student consents to it (preferably in writing). Also, disclosure may occur when there is clear and present danger to the counseled person or to others. (TB)

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Coaching and Counseling: Liability Issues

Audra L. Colvert
School of Speech Communication
James Madison University
Harrisonburg, VA 22807

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Paper presented at the
Speech Communication Association Convention
New Orleans, Louisiana

November 19-22, 1994

CS508748

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Abstract

The decision to help students is a serious responsibility. Since there is virtually no legal ground protecting coaches who give help and advice to students, coaches must be willing to weigh the consequences of their actions. This paper answers the call for more research on legal issues surrounding the activity of counseling students by examining the largest issue surrounding counseling--confidentiality, by first examining confidentiality laws in counseling situations; second answering some of the questions surrounding this law, and finally developing some ethical guidelines for coaches who are concerned about keeping the trust they have established with their students and covering themselves legally in the process.

(105 words)

Another year has passed since I wrote my last paper concerning coaching and counseling. During that time I have had to deal with new students and new problems. I am a year older and hopefully a year wiser. But, as I talk with my students and help them help themselves, I am leery of becoming too involved. Helping students with their questions is not the problem, I am concerned about what happens next time when a student decides to take me to court because I gave bad advice or I am called to testify because of what a student told me during a practice session. Being asked to go to court for one of your students seems to me to be a valid reason for concern about the role of coaching and counseling students. This is not a new issue. Discussion of this role first appeared at the 1992 Speech Communication Conference in Chicago, Illinois at a roundtable discussion entitled "I'm your coach not your therapist ". This panel recommended that there be a contract created between coaches and students to protect coaches from certain liability issues. In 1993, in Miami Beach, Florida another SCA panel entitled "Coaching and Counseling" concentrated on the multifaceted roles of forensics coaches as counselors and again urged that more research be conducted on the legal ramifications of a coach engaging in a helping relationship. Now in 1994, the panel before us looks at multiple liability concerns for coaches. This paper answers the call for more research on legal issues surrounding the activity of counseling students by examining the largest issue surrounding counseling--confidentiality, by first examining confidentiality laws in counseling situations; second answering some of the questions surrounding this law, and finally developing some ethical guidelines for coaches who are concerned about keeping the trust they have established with their students and covering themselves legally in the process.

Confidentiality laws

During a forensics season we often spend more time with our students than we do with our families. As a matter of fact, sometimes coaches find themselves with an instant family of twelve. Each "child" is craving attention and wants to share their experiences with the "parent". While much of this sharing takes place publicly there are many problems students want to talk about privately. "When students are having problems with their family, social or

romantic relationships, their performance in forensics can suffer, A student should know that her coach is willing to listen to the problems she is having dealing with her parents' divorce, the friend that has betrayed her, or the boyfriend that dumped her" (Wynn, 1994, pg. 5). A student should also know that they can trust this coach with the information to be shared. This trust that is established between parent and child or the new relationships of counselor and client transcends the coach and student relationship. This transcendence allows for a very personal relationship to develop. A relationship involving listening, attending, helping, and advising students about their problems. This is a very serious obligation for coaches to take upon themselves and they must know the consequences of such actions. A student has entrusted you with private information. As a coach, the obligation to respect the privacy of students and keep their information confidential is important if we want to maintain a code of professional ethics.

There are three terms which much be clarified when examining the legal ramifications of confidentiality. In Ethical Issues in Clinical Practice Under Virginia Law: A Clinical Psychology Handbook a distinction is made between the terms confidentiality, privacy, and privilege. According to this text: "the term 'confidentiality' implies that within a relationship, an individual has confided private information with the understanding that it will not be disclosed. Confidentiality,.. refers to a standard of professional conduct which protects the privacy of the information about the patient (student) by protecting the confidentiality of the therapist-patient relationship. Privilege is a legal concept. Each state has laws which specify the relationships in which communication will be considered "privileged communication" (i.e., protected from being disclosed in court proceedings)...Both have roots in the concept of an individual's right to privacy- the right of individuals to make their own decisions about how much personal information about them will be shared with others (Fisher, M.A. 1991, pg. 58).

Privileged communication is a formal, legal confidentiality extended to a few such as priests, lawyers, and physicians, but it is not given to teachers and coaches" (Jones et al, 1982, pg. 25). The history of privileged communication has existed since the early nineteenth

century for the physician-patient relationship. Psychologists and Psychotherapists have been awarded this privilege since the 1950's when legitimacy was obtained in the field. Recently, this privilege has been extended to cover other counselors, such as sexual assault counselors and social workers (McNaughton, J. as cited in Harvard Law Review, 1985 p. 1530).

For the few coaches that are certified in counseling this offers a protection that most coaches do not have with the law. In a clearly defined situation, a certified counseling coach can become a students counselor. The counseling that occurs between coaches and students in these contexts must be clearly stated and then a series of ethical guidelines concerning "dual relationships" set forth by the American Psychological Association (APA, 1992) govern the coaches/counselors actions. Unfortunately, most coaches do not have the certification which allows them the status of having a privileged communication situation.

So can we engage in a confidential discussion with our students? Can our students trust us? Yes and no. As long as we are aware of what we are getting ourselves into and the limitations in our abilities to help students beyond our training then yes we can help, but we must know what kinds of guidelines to set for ourselves in helping students and know when to refer students to trained professionals. We must also recognize that we may be asked to violate a students right to privacy by the courts or by the institution who employs us.

It is important for students to be able to have someone they can confide in. Ethically, maintaining confidentiality should be done because the information being shared with coaches is the student's and they have the right to make the choice about when, and to whom, it will be discussed. Most of the problems students are dealing with are relational and as communication scholars we are trained to handle many of these situations. Not all problems are going to be life threatening or against the law. Often students simply want a non-judgemental ear to listen to them work out their problems. They need sounding boards. When students do come to coaches in these situations they want to know that the information isn't going to be spread around the forensic circuit. As professionals and as role models we do have an obligation to conduct ourselves with the highest of ethical standards. Respecting the privacy

of students should be of paramount importance when establishing relationships with students. The benefits to team performance are immeasurable if students trust and respect their coaches.

The Answers to those legal questions

So what happens when the information disclosed to you violates a university, local, or state law? What happens when you believe the information you were just told could prevent someone from hurting themselves or another person? What happens when you are subpoenaed by the courts to tell the information that was exchanged in confidence? What happens when a student is dissatisfied with your assistance and reports you to the proper authorities? Do you have any protection under the law?

These questions are very real and very serious. Our students are human and they do make mistakes. Coaches must be careful not to let their mistakes harm any member of the team. If the information disclosed to coaches does violate some university, or state law and it is not reported by the coach to the proper authorities and something happens later on, the coach can be held partially responsible for the actions. For example, if I know my students sells marijuana in the residence halls and he gets caught. As a representative of the university, I was obligated to report my findings. My role as a counseling coach comes into conflict with the information entrusted to me by the student and my job contract as a state employee. Also, if this same student is taken to court, I could be asked to testify against my student. Coaches have absolutely no legal grounds for disclosing or not disclosing private information about a student. No matter how close coaches get with students remember the confidential relationships shared with students are not protected under the law.

While it may seem like a hopeless situation, the advantage to not having to adhere to the privilege communication law is that it allows coaches to report what they see to proper persons when the situation arises without worrying about breaking any laws. Breaking trust, yes...breaking laws...no. The bulimic sophomore on your team who is showing signs of weakness and disease can be reported to the university counseling center, residence hall directors, parents, and even the public health office. Steps can be taken to get her help

voluntarily or involuntarily. Help is available for students who come to seek advice from their coaches. It just isn't always help from the coach. Referral is essential when the students problems are too severe for coaches to handle.

Ethical Guidelines

How can I decide when to disclose information and when to keep it private?There are three circumstances that allow clinical psychologists to disclose confidential information. I believe if coaches and teachers follow these rules as a general guideline they will be able to protect themselves as well as their students. A key to remember is that you are not disclosing your information you are disclosing a students personal information. Protecting a students right to privacy is important when it doesn't;t violate any safety or legal standards. The following information was adapted from Ethical Issues in Clinical practice Under Virginia Law: A Clinical Psychology Handbook by Mary Alice Fisher.

Disclosure with student consent. It is advised that this consent be obtained in writing. Protecting yourself from civil liability suits is crucial. Having a signed consent form at least is a start for protecting yourself from students who may be unstable. Many coaches are now having students sign release forms for participation on the team. These release forms present a safety net for some college and university coaches. They include guidelines for conduct as well as asking students to adhere to team guidelines. Depending on what state the transactions are occurring can impact the legality of these forms. Having students sign contracts at the beginning of the year can start to protect coaches from being sued civil for breach of contract or unfair treatment as a member of the team. Without written consent the troubled students could deny that permission was given and if it damages the character of the student--sue for defamation of character. So if you are getting involved.....get the permission for disclosure in writing.

Ethically-allowed disclosure without student consent . The APA Ethical code specifies only one exception to the rule of maintaining confidentiality "those unusual circumstances in which not to do so would result in clear danger to the person or to others" (EP 5, Preamble).

Recognizing that student's lives may be in danger because of suicide or that they have the potential of committing a homicide are the only exceptions recognized by the APA. However, dilemma's arise that are not as clear. "Legally, there are many dilemmas coaches face when they become involved in the personal lives of students. If the student is a minor, teachers and coaches are required by law to report cases of abuse or neglect to the appropriate child welfare agencies. As students become adults, the legal line is very complicated" (Colvert, 1993, p. 7). For example, a bulimic student who is starving herself can be in life threatening danger. Making the decision to break confidentiality and report it to a parent or to the proper authorities is a decision that must be made by the individual coach. Since legally coaches are not given the privileged communication status, we do have more freedom than a certified counselor to report situations we are not qualified to handle. In fact, it would be warranted to refer students to professionals any time their problems are outside of our scope of expertise. If coaches act as a counselor and are untrained in dealing with psychological disorders, there can be major harm in not reporting the student's actions to qualified professionals. Keeping vital information from the proper authorities can put coaches in danger of obstructing justice.

Disclosures in response to "legal limits of confidentiality. The APA ethical code requires that, where appropriate, we inform clients (students) of any legal limits of confidentiality which apply to our conversations. Again, conversations are not privileged so it is especially important to let students know that coaches can not always keep information confidential. That there may be times when certain types of information may be required to be reported to the proper authorities.

Helen S. Farmer, a leading psychologist at the University of Urban -Champaign researched in 1987 the Illinois laws surrounding teacher/student confidentiality. Based on Illinois law, "When the student problem is one of drug abuse or involves illegal processes (e.g. incest) there are legal requirements that govern confidentiality and the behavior of the teacher" (Farmer, 1987. p. 175). Farmer recommends learning the law of your state. One way to find out your responsibilities is to review the faculty handbook that was given to you when you

entered the university. Many universities have codes of conduct for students. Students who violate these universities policies whether it is academic dishonesty or putting their lives in danger by taking drugs or becoming violent put your job at risk if they tell you about it and you do nothing. Codes of conduct set for by the university can state your limitations for helping students as well as the universities responsibility to protect instructors from students.

One of the few legal bases for maintaining confidentiality that communication teachers and coaches have is in the area of mediation. While this is an emerging field, it can provide protection in some cases and in some states. Virginia is one of the few states that currently allows mediators some protection from court disclosures. The documents and conversations created during an established mediation session are protected to some extent. A mediator cannot be asked to testify for or against the parties in dispute. Also, the contracts that were created during a mediation session do become binding in the court system. So if a coach does a formal mediation between two parties this can sometimes be protected from the legal system. Be wary mediation laws are evolving and changing very quickly.

Conclusion

The decision to help students is a serious responsibility. Since there is virtually no legal ground protecting coaches who give help and advice to students, coaches must be willing to weigh the consequences of their actions. I believe the forensics coaching community does have a responsibility to help students grow both mentally and emotionally. This responsibility involves commitment to a strong ethical code. By recognizing our limitations we are being ethically responsible. By maintaining confidentiality whenever possible, we are being ethically responsible. By reporting information to the proper authorities we are being ethically responsible. We are not being responsible when we let students problems go unattended. We are not being responsible when we share a "really juicy story" with our colleagues. We are not being responsible when we don't ask for help. Our professional ethics begins when we undertake the role of coach and teacher. We must be willing to risk helping students but also

recognize the limitations and the consequences of those actions. Actions that are not protected by the law. Ultimately, our concerns must be for the well-being of the students.

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